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### To “Defund” the Police

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## SYMPOSIUM ESSAY

# To “Defund” the Police

Jessica M. Eaglin\*

**Abstract.** Much public debate circles around grassroots activists’ demand to “defund the police,” raised in public consciousness in the summer of 2020. Yet confusion about the demand is pervasive. This Essay adopts a literal interpretation of “defund” to clarify and distinguish four alternative, substantive policy positions that legal reforms related to police funding can validate. It argues that the policy debates between these positions exist on top of the ideological critique launched by grassroots activists, who use the term “defund the police” as a discursive tactic to make visible deeper transformations in government practices that normalize the structural marginalization of black people enforced through criminal law. By recognizing this socially contextualized meaning to the call to defund the police, this Essay offers two important insights for the public in this current moment. First, it urges the public to confront the structural marginalization of black people when evaluating legal reforms that may impact police budgets. Second, the Essay encourages the public to embrace the state of confusion produced by the demand to “defund the police” when considering social reforms going forward.

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## Introduction

In May 2020, Officer Derek Chauvin killed George Floyd in Minneapolis, Minnesota.<sup>1</sup> In response to Floyd’s death, the police killing of Breonna Taylor,<sup>2</sup> and many other instances of police killing unarmed black persons,<sup>3</sup> often without officers being held to account by the law,<sup>4</sup> political protests erupted across the United States during the summer of 2020.<sup>5</sup> The slogan that emerged from the protests was simple: “Defund the police.”<sup>6</sup>

But what does that mean? As a public-policy demand, the position is controversial. Pundits and politicians from both sides of the aisle have dismissed the demand outright.<sup>7</sup> At the same time, the demand emerges during

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1. Matt Furber, Audra D. S. Burch & Frances Robles, *What Happened in the Chaotic Moments Before George Floyd Died*, N.Y. TIMES, <https://perma.cc/Y4SC-8XMZ> (updated June 10, 2020); Laurel Wamsley, *Derek Chauvin Found Guilty of George Floyd’s Murder*, NPR (Apr. 20, 2021, 5:37 PM ET), <https://perma.cc/4CQP-T4DZ>.
  2. Will Wright, *Louisville Police Fire Brett Hankinson, Officer in Breonna Taylor Shooting*, N.Y. TIMES, <https://perma.cc/AAA5-P254> (updated Sept. 15, 2020).
  3. See Cheryl W. Thompson, *Fatal Police Shootings of Unarmed Black People Reveal Troubling Patterns*, NPR (Jan. 25, 2021, 5:00 AM ET), <https://perma.cc/6V5S-WT2K>.
  4. See, e.g., *id.* (discussing the “myriad ways that law enforcement agencies fail to hold officers accountable”); Nicholas Bogel-Burroughs, *Louisville Officer Who Shot Breonna Taylor Will Be Fired*, N.Y. TIMES (updated Apr. 16, 2021), <https://perma.cc/U87E-NWLR> (illustrating the way criminal law fails to hold police officers accountable).
  5. Helier Cheung, *George Floyd Death: Why U.S. Protests Are So Powerful This Time*, BBC NEWS (June 8, 2020), <https://perma.cc/5YB9-DVBJ> (noting that protests occurred in all fifty states).
  6. See, e.g., Sam Levin, *Movement to Defund Police Gains “Unprecedented” Support Across U.S.*, GUARDIAN (June 4, 2020, 6:00 EDT), <https://perma.cc/63C7-J2CR> (to access, click “View the live page”).
  7. See, e.g., Katie Rogers, *Trump Continues Criticism of Movement to Defund the Police*, N.Y. TIMES (July 13, 2020), <https://perma.cc/NMT7-ACFQ>; Lauren Gambino, *Trump and Republicans Use Calls to “Defund the Police” to Attack Democrats*, GUARDIAN (June 8, 2020, 9:09 PM EDT), <https://perma.cc/N7VX-LLYV> (quoting then-White House press secretary Kayleigh McEnany as saying, “The president is appalled by the ‘defund the police’ movement”); Max Cohen, *Biden Rejects Calls to Defund Police*, POLITICO, <https://perma.cc/6LNP-L8LN> (updated June 8, 2020, 6:56 PM EDT) (quoting then-candidate Biden as saying, “No, I don’t support defunding the police... I support conditioning federal aid to police based on whether or not they meet certain basic standards of decency and honorableness and, in fact, are able to demonstrate they can protect the community and everybody in the community.”); Rep. Karen Bass, *“Defund Police” Is Probably One of the Worst Slogans Ever*, WASH. POST, (June 15, 2020, 12:59 PM PDT), <https://perma.cc/8YVT-KTQ3>; Shia Kapos, *“It’s a Nice Hashtag”: Chicago’s Lightfoot Pushes Police Reform, Not Defunding*, POLITICO (June 24, 2020 4:30 AM EDT), <https://perma.cc/9FHU-97HX> (explaining that Chicago Mayor Lightfoot rejects the call to defund the police because “it ignores how reform works, will hurt efforts to diversify the force, and goes against what Chicago residents are telling her they want”); William Saletan, *“Defund the Police” Is a Self-Destructive Slogan*, SLATE (Nov. 18, 2020, 8:45 PM), <https://perma.cc/NSM3-Z32B>.

a pivotal moment when people from across the political spectrum are expressing interest in advancing criminal legal reforms—including to policing—although to very different ends.<sup>8</sup> Unsurprisingly, even as they express discomfort with the term “defund the police,” policymakers are proposing reforms that will, in effect, reduce funding to the police. Yet, because the demand to defund the police has emerged as a political lightning-rod, there is real confusion about how to interpret the significance of such reforms. Further, public debates have yet to fully explain why this demand, as a mode of discourse, is so controversial in this historical moment.<sup>9</sup>

This Essay seeks to clear the air and thus to facilitate public discourse. It adopts a literal interpretation of defunding to clarify and distinguish four alternative, substantive policy positions that legal reforms related to police funding can validate. It argues that the policy debates between these positions exist on top of the ideological critique launched by grassroots activists, who use the term “defund the police” as a discursive tactic to make visible deeper transformations in government practices that normalize the structural marginalization of black people enforced through criminal law.<sup>10</sup> In recognizing this socially contextualized meaning of the call to defund the police, this Essay offers two important insights. First, it emphasizes that the place to start when evaluating legal reforms that may impact police budgets is not with matters of funding or policing; rather it is with the structural marginalization of black people we have all been conditioned not to question. Second, the Essay encourages the public to embrace the state of confusion produced by the demand to defund the police when considering social reforms going forward.

The Essay proceeds in two parts. Part I offers a typology of legal reforms that substantiate four different ways to conceptualize the act of defunding the police in this moment. To defund the police can refer to a long-term policy aim to abolish the police, to recalibrate what police do in society, to create accountability measures through conditional funding, or simply to save government resources. Though these four interpretations of defunding are not mutually exclusive, Part I brings to light the significant implications each

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8. See Benjamin Levin, *The Consensus Myth in Criminal Justice Reform*, 117 MICH. L. REV. 259, 266-74 (2018) (complicating the apparent “consensus” about how to address mass incarceration by providing a typology distinguishing between “over” and “mass” critiques and criminal law reforms).

9. See, e.g., Christy E. Lopez, *Defund the Police? Here’s What That Really Means*, WASH. POST (June 7, 2020, 3:37 PM PDT), <https://perma.cc/C92N-AMXF> (recognizing that, for “casual observers,” calls to defund police “may seem a bit disorienting—or even alarming” and urging parallel tracks between defunding and reforming police).

10. Note that this Essay focuses on black people in the United States, with a particular emphasis on economically disadvantaged individuals. However, the ideological critique applies with equal force to other people of color, especially Latinx people, who also experience deep structural disadvantages.

meaning carries for structurally marginalized race- and class-vulnerable people. Part II situates grassroots activists’ demand to defund the police in social and historical context, so as to disentangle critiques of the demand as a discourse from debates between the policy positions described in Part I. It argues that the controversy around the call to defund the police derives in part from the substantive demand of grassroots activists to confront the structural marginalization of race- and class-vulnerable populations enforced through criminal law. The controversy also generates from grassroots activists’ attempt to claim epistemic power over two concepts—policing and defunding—that legitimate changes in government practice and make structural marginalization appear beyond redress. Ultimately, this Essay encourages the public to see the demand to defund the police as socially constructed. It emphasizes that the state of confusion the demand creates opens space for us all to imagine different futures.

## **I. A Typology of “Defunding” Police Reforms**

“Defund” is a transitive verb that means “to withdraw funding from”<sup>11</sup> or “to withdraw financial support from.”<sup>12</sup> In the context of U.S. practices, to defund colloquially refers to either a reduction in, or the elimination of, funding.<sup>13</sup> It is important to understand the literal meaning of the word because much public debate turns on social interpretations of the word in the context of policing. As Part II discusses in more detail, grassroots activists’ demand to “defund the police” in 2020 in response to police killings of unarmed black women and men has a particular, contextualized meaning. To fully appreciate that meaning, we must disentangle it from the ongoing policy debates surrounding legal reforms that impact police budgets. This Part situates the literal act of defunding the police within four different policy positions about policing. It identifies different legal reform proposals that substantiate each of those positions. This Part moves from positions most willing to engage with structural marginalization enforced through criminal law to those least concerned with that reality.

### **A. Police Abolition**

Abolitionists challenge the idea that imprisonment and policing are a solution for social, political, and economic problems in the United States. They

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11. *Defund*, MERRIAM-WEBSTER, <https://perma.cc/P9FL-NPY2> (archived May 6, 2021).

12. *Defund*, DICTIONARY.COM, <https://perma.cc/23C5-ZLN5> (archived May 6, 2021).

13. See, e.g., Thomas E. Keefe, *The Etymology of Defund* (June 2020), <https://perma.cc/5N8P-M5ZL> (to access, click “View the live page) (noting that “*defund*” has historically and colloquially been used in more emotional and dramatic situations”).

believe that after years of trying to “reform” the police, reform efforts are doomed to fail.<sup>14</sup> Abolitionists emphasize that the police are an institution designed to surveil and control marginalized populations, particularly black people.<sup>15</sup> Accordingly, the aim should be abolishing the police and other arms of the “prison industrial complex” in order to reimagine public safety.<sup>16</sup> The abolitionist project is both pragmatic—for example, reducing police presence should also reduce police killings—and existential—in that it reflects a long-term goal of replacing police with alternative means of ensuring safety.<sup>17</sup>

When abolitionists talk about responding to police violence, they often point to the Illinois Reparations for Police Torture Victims Act drafted by survivors and activists in response to the heinous acts of torture by the Chicago Police Department under the leadership of the late Jon Burge.<sup>18</sup> Passed in May 2015, this legislation provides non-financial reparations for survivors and their families, including an official apology, free psychological counseling, free education at the City Colleges, and job training; it mandates that public schools teach about the torture in eighth- and tenth-grade curriculums; and it approves

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14. Mariame Kaba, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://perma.cc/8D6M-K23U> (“The only way to diminish police violence is to reduce contact between the public and the police.”).
  15. See, e.g., Mychal Denzel Smith, *Abolish the Police. Instead, Let’s Have Full Social, Economic, and Political Equality*, NATION (Apr. 9, 2015), <https://perma.cc/Z3CN-TPGM> (“What do you do with an institution whose core function is the control and elimination of black people specifically, and people of color and the poor more broadly? You abolish it.”); PAUL BUTLER, CHOKEHOLD: POLICING BLACK MEN 6 (2017) (“American cops are the enforcers of a criminal justice regime that targets black men and sets them up to fail.”).
  16. See, e.g., MPD150, ENOUGH IS ENOUGH: A 150 YEAR PERFORMANCE REVIEW OF THE MINNEAPOLIS POLICE DEPARTMENT 40-41 (2020), <https://perma.cc/5T8Y-NPJ9>.
  17. Kaba, *supra* note 14; BUTLER, *supra* note 15, at 234-35. A thick vision of police abolition emerges from the deep intellectual history of scholar-activists like Angela Davis and Ruth Wilson Gilmore, each of whom argues that transforming policing and incarceration in the United States has to be an economic project. See RUTH WILSON GILMORE, THE GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA 11 (2007) (framing prison expansion as central to the changing political economy). See generally ANGELA Y. DAVIS, ARE PRISONS OBSOLETE? (2003) (critiquing the prison-industrial complex).
  18. See, e.g., Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613, 1623-27 (2019) (pointing to the reparations ordinance as an example of how abolitionists would “react to the most awful forms of violence”—in this case, violence perpetrated by the police); see also Georgetown Law, *Police Abolition: What Does It Mean?—Georgetown Law’s “Rethinking Policing” Series*, YOUTUBE (June 24, 2020), <https://perma.cc/AHL3-XSJJ> (to access the video, click “View the live page”) (comments of Justin Hansford at 14:47-16:05, noting that abolition is a “very generous” approach and recognizing that “it’s perhaps the case that justice looks like reparations more so than justice looks like retributive justice”).

creation of a permanent memorial in the city.<sup>19</sup> In addition, the City of Chicago set aside \$5.5 million to financially compensate living survivors of the torture.<sup>20</sup>

The ordinance did not directly defund the police, yet the funding for the reparations ordinance did not derive from the coffer of money set aside by the city to cover police liability cases either.<sup>21</sup> In Chicago, that coffer is set aside in the police budget to fund civil lawsuits that the City anticipates will result from police misconduct each year.<sup>22</sup> The funding for the ordinance, in contrast, requires the city to pay torture victims with general taxpayer dollars. Regardless of whether the reparation ordinance deters police from engaging in wrongful behavior in the future, both its financial and non-financial conditions require the City of Chicago to invest in the futures of the marginalized communities most impacted by police violence. In effect, then, the reparation legislation requires the city to allocate taxpayer dollars otherwise available for the city to spend on policing and instead increase funding for alternative ways to connect and understand one another.<sup>23</sup>

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19. G. Flint Taylor, *The Long Path to Reparations for the Survivors of Chicago Police Torture*, 11 NW. J.L. & SOC. POL'Y 330, 348-51 (2016).

20. Flint Taylor, *How Activists Won Reparations for the Survivors of Chicago Police Department Torture*, IN THESE TIMES (June 26, 2015) <https://perma.cc/Z627-V6V9> (noting that the \$5.5 million should allow approximately \$100,000 per survivor, regardless of whether the statute of limitations for an individual to bring a civil suit against the city had run).

21. See *id.* (emphasizing that the city paid individuals who could not pursue civil lawsuits); Kristen Gwynne, *Chicago to Pay \$5.5 Million in Reparations for Police Torture Victims*, ROLLING STONE (May 6, 2015, 10:27 PM ET), <https://perma.cc/4QNZ-RD9W> (“Chicago has allotted \$5.5 million to be doled out to dozens of police torture victims—a drop in the bucket compared to the \$100 million spent on restitution for lawsuits linked to Burge’s abuse, and the \$20 million spent defending him and his team.”); see also Joanna C. Schwartz, *How Governments Pay: Lawsuits, Budgets, and Police Reform*, 63 UCLA L. REV. 1144, 1176-77 & nn.102-04 (2016) (noting that the city of Chicago requires its police department to pay for police liability cases, but allocates funds for that responsibility directly into the police budget and covers overages when needed).

22. This is the coffer of money out of which § 1983 claims, subject to any qualified immunity defense, would be compensated. See Schwartz, *supra* note 21, at 1176 n.102. In recent years, much legal scholarship has explored the shortcomings of qualified immunity on empirical and legal grounds. See, e.g., Fred O. Smith, Jr., *Formalism, Ferguson, and Qualified Immunity*, 93 NOTRE DAME L. REV. 2093, 2095 (2018) (discussing groundswell of support for reexamining the doctrine of qualified immunity). For a discussion of the limited significance of qualified immunity reform for the larger project of achieving social justice, see Fred O. Smith, Jr., *Beyond Qualified Immunity*, 119 MICH. L. REV. ONLINE 121 (2021) (recognizing the merits of expanding possible liability against individual police officers, but explaining its limits in addressing systemic practices and proposing other judicial reforms that could “serve to shape the incentives, knowledge, and ultimately, the actions of policymakers in ways that could meaningfully reduce injustices, inequality, and unnecessary death in the criminal legal system”).

23. In 2017, for example, the Chicago police department received 38.6% of the city’s \$3.7 billion general fund budget. The city allocated just 2.1% of that same fund to the  
*footnote continued on next page*



From the abolitionist perspective, defunding the police is a first step toward abolishing the police. It is a demand to enact “nonreformist reforms” of the police, by beginning to divest from police and from the expanding carceral state.<sup>24</sup> Importantly, abolitionists neither seek to eliminate police tomorrow nor to exist in a world without replacements.<sup>25</sup> Rather, they seek to create ways to connect that are sensitive to the needs of the most marginalized in society, particularly intersectionally vulnerable black people. In the long term, such a world would not include police, in any form or for any function.<sup>26</sup> Defunding the police moves society in that direction.

## B. Police Recalibration

To defund the police can also mean supporting the idea that we need to reprioritize existing public resources to create healthier communities. Significant amounts of public resources go toward police, yet more policing does not always make a community safer, particularly when considering economically disadvantaged black and brown communities. Other forms of public spending could increase safety more effectively while also creating a more equitable society. While abolitionists seek to transform society by ending policing, recalibrationists seek to transform it by altering police responsibilities. Those changes can occur through reductions in funding to police.

As an example, consider Chicago Alderperson Rossana Rodriguez Sanchez’s recently proposed legislation to expand the city’s public mental health infrastructure using funds taken from the Chicago Police Department

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Department of Family and Support Services, which includes violence reduction programs. See CTR. FOR POPULAR DEMOCRACY, LAW FOR BLACK LIVES & BLACK YOUTH PROJECT 100, FREEDOM TO THRIVE: REIMAGINING SAFETY & SECURITY IN OUR COMMUNITIES 23 (2017).

24. As MPD150 succinctly stated in 2020, “We (and so many others in this movement [to abolish the police]) don’t want to just rebrand cops, or privatize cops, or make cops ‘nicer.’ The goal is a city without police, and defunding police is one tool we have to reach that goal.” MPD150, *supra* note 16, at 48. For a definition of “non-reformist reforms,” see Amna A. Akbar, *Demands for a Democratic Political Economy*, 134 HARV. L. REV. F. 90, 101 (2020) (“non-reformist reforms require a ‘modification of the relations of power,’ in particular ‘the creation of new centers of democratic power.’” (quoting ANDRÉ GORZ, *STRATEGY FOR LABOR: A RADICAL PROPOSAL* 8 & n.3 (Martin A. Nicolaus & Victoria Ortiz trans., 1967))).
25. See Kaba, *supra* note 14 (“[D]on’t get me wrong. We are not abandoning our communities to violence. We don’t want to just close police departments. We want to make them obsolete.... We can build other ways of responding to harms in our society.”).
26. See, e.g., Bernard E. Harcourt, *Introduction to 3/13: Police Abolition*, ABOLITION DEMOCRACY 13/13 (Oct. 3, 2020), <https://perma.cc/MV6R-4B2R> (urging the replacement of police with “violence interrupters”).

budget.<sup>27</sup> Since 2011, Chicago has closed or privatized over half of its city-run health clinics due to cuts in state and city funding.<sup>28</sup> In their stead, the Cook County jail has emerged as a primary mental health resource for marginalized Chicagoans.<sup>29</sup> Sanchez’s proposed legislation would create a publicly funded and operated Chicago Crisis Response and Care System that would be housed within the Chicago Department of Public Health.<sup>30</sup> It would also establish twenty-four-hour crisis response teams throughout Chicago.<sup>31</sup> And it would designate other social welfare actors, rather than police officers, to respond to mental-health-related calls for help. In so doing, the legislation could reduce police violence by reducing the incidence of police responding to people in mental health crises.<sup>32</sup>

This reform would explicitly defund the police. The funding for this mental health services system would be appropriated from the Chicago Police Department budget, including its overtime budget.<sup>33</sup> Thus, the police budget would provide city funding to supplement the mental health services currently provided in large part at the Cook County jail.<sup>34</sup> This approach would directly impact police functions as well. In effect, the reform would narrow the scope of what Chicagoans expect police officers to do in their city.

Like abolitionists, policymakers urging recalibration-oriented defunding reforms are deeply concerned with structural marginalization. As an example, the lack of mental health services in Chicago has disproportionately affected race- and class-marginalized populations.<sup>35</sup> Yet Rodriguez Sanchez’s proposal would also explicitly produce organizational reforms within the Chicago Police Department by creating new public infrastructure to take over some of

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27. City Council Order 2020-242 (Chicago, Ill., Sept. 9, 2020) (unenacted).

28. Mattie Quinn, *This Is What Happens When a City Shuts Down Mental Health Clinics*, GOVERNING (Sept. 27, 2018), <https://perma.cc/XP5R-LBSQ> (to access, click “View the live page,” then click “CONTINUE TO SITE”).

29. *See id.*

30. Elizabeth Weill-Greenberg, *Chicago Lawmakers Push to Build Team of Emergency Responders Who Aren’t Police*, APPEAL (Sept. 28, 2020), <https://perma.cc/4VH5-6ZU6>.

31. *Id.*

32. *See id.* (noting that the proposed reforms are inspired in part by fatal encounters between the police and black youth experiencing mental health crises)

33. *Id.*

34. *See* Quinn, *supra* note 28 (emphasizing that the county provides mental health services in Chicago by default because the state and the city have slashed funding for such services). Significantly, the public health initiative would not be housed in the police department or any other criminal justice arm of the government, even if the police budget provides funds for it. Weill-Greenberg, *supra* note 30.

35. *See* Quinn, *supra* note 28 (noting that two of the mental health facilities closed by the city were located in already-underserved, low-income black and brown neighborhoods).

the activities police currently undertake by default.<sup>36</sup> In so doing, it would free up existing resources for police to engage in some of the kinds of responsibilities recalibrationists expect police officers to continue doing.<sup>37</sup> In that sense, the legislation complements the work of legal scholars that look at policing like any other public good.<sup>38</sup> To recalibrationists, the point of reductions in police funding is not the long-term elimination of all police; rather, it is the transformation of their function in society.<sup>39</sup>

Thus, the distinction between the first and second meanings of defunding the police is nuanced. While abolitionists may consider Rodriguez Sanchez’s proposed legislation to be part of their agenda, recalibrationists would not consider the abolitionist-oriented reparations ordinance to be part of *their* agenda. Both seek to build alternative ways to ensure safety in communities, yet recalibrationists seek to explicitly change police organizations as well. Because abolitionists envision a long-term end to policing, such transformations are, at best, a side effect. For recalibrationists, the effect on policing is the point. From the recalibration perspective, to defund the police can be a first step toward foundationally transforming police, which can in turn transform society, too.

### C. Police Oversight

Defunding the police could also fit within the managerialist idea that we need to reprioritize allocation of our constrained public resources to better shape the behavior of police departments and individual police officers. That police lack accountability is a well-established problem in legal and policy circles. Managerialists suggest that funding can be the lever to create needed police accountability.<sup>40</sup> By attaching funding to technocratic metrics that

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36. See Megan Quattlebaum & Tom Tyler, *Beyond the Law: An Agenda for Policing Reform*, 100 B.U. L. REV. 1017, 1027 (2020) (proposing that Americans begin police reform discussion by deciding what they want police to do, and, potentially, “to reduce police officers’ functions down to the smallest, hard core of violent and other serious crime problems . . . for which we see no other possible response.”).

37. See *id.* at 1027-28.

38. See, e.g., Tracey L. Meares, *Synthesizing Narratives of Policing and Making a Case for Policing as a Public Good*, 63 ST. LOUIS U. L.J. 553 (2019) [hereinafter Meares, *Narratives*]; Tracey L. Meares, *Policing: A Public Good Gone Bad*, BOS. REV. (Aug. 1, 2017), <https://perma.cc/Y5U2-8E83> [hereinafter Meares, *Public Good*].

39. See Tracey L. Meares & Tom R. Tyler, *The First Step Is Figuring Out What Police Are For*, ATLANTIC (June 8, 2020), <https://perma.cc/3RAH-JSHX>; Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2066-67 (2017) (critiquing the shortcomings of the legitimacy frame to police reform and proposing a “legal estrangement perspective [that] treats social inclusion as the ultimate end of law enforcement”).

40. See, e.g., INIMAI CHETTIAR, LAUREN-BROOKE EISEN, NICOLE FORTIER & TIMOTHY ROSS, BRENNAN CTR. FOR JUST., REFORMING FUNDING TO REDUCE MASS INCARCERATION 12-17  
*footnote continued on next page*

measure lawful or effective policing, managerialists aim to “use the power of the purse” to shift policing practices.<sup>41</sup> While incentivizing adherence to such metrics need not lead to reductions in funding to police departments, managerialists suggest that it could.<sup>42</sup> In this sense, the manipulation of success measurements may reduce currently guaranteed funding to state and local police departments while incentivizing different department-wide, systemic policing policies.<sup>43</sup>

Policies that fit within this interpretation of defunding the police are rarely described as such, though they surely could have that effect. As an example, in June 2020, then-President Donald Trump promulgated Executive Order 13929, requiring police departments to adopt “use-of-force policies [that] prohibit the use of chokeholds . . . except in those situations where the use of deadly force is allowed by law” in order to receive a certification that allows access to federal grant money.<sup>44</sup> At the time, most state governments and localities did not regulate police chokeholds.<sup>45</sup> In effect, then, Trump’s single act could have eliminated federal funding for the majority of police departments across the country. Similarly, two congressional bills introduced in the summer of 2020 seek to incentivize chokehold regulation at the state and local level by withholding federal funds from law enforcement agencies that refuse to take action.<sup>46</sup>

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(2013) (“Weaving together dollars, incentives, and policy goals can serve as a potent lever for change” that “could be applied throughout the criminal justice system.”)

41. See *id.* at 12.

42. See *id.* at 14 (“If agencies do not achieve ‘success,’ the consequences would be a *reduction in funding, some other negative impact, or possible termination.*”) (emphasis added).

43. As of 2016, there were 599,548 employees of local police, 359,843 employees of county sheriffs, and 91,097 state police employees. SHELLEY HYLAND, U.S. DEP’T OF JUST., NCJ 251762, FULL-TIME EMPLOYEES IN LAW ENFORCEMENT AGENCIES, 1997-2016, at 2 tbl.2 (2018). This tracks the observation that policing remains a mostly local matter. Rachel A. Harmon, *Federal Programs and the Real Costs of Policing*, 90 N.Y.U. L. REV. 870, 877 (2015) (“Though subject to state and federal law, police departments are overwhelmingly funded by local governments and governed by the local political process.”).

44. See Exec. Order No. 13,929, 85 Fed. Reg. 37,325, 37,325-26 (June 19, 2020).

45. Prior to summer 2020, only a handful of local municipalities and state governments regulated police chokeholds. See Trevor George Gardner & Esam Al-Shareffi, *Regulating Police Chokeholds*, 111 J. CRIM. L. & CRIMINOLOGY ONLINE (forthcoming 2021) (manuscript at 11-12, 14) (on file with author) (noting that prior to Floyd’s death in May 2020, only four states and the District of Columbia regulated the police chokehold through statutory law while eighteen of the fifty largest municipalities in the country had enacted some type of regulation over police chokeholds).

46. JUSTICE Act, S. 3985, 116th Cong. § 105 (2020); George Floyd Justice in Policing Act of 2020, H.R. 7120, 116th Cong. § 363 (2020).

Should either of these bills pass, it would have the same effect as Trump’s executive order—conditioning funding upon enactment of specific police policies. While local police departments are largely funded by local taxes, federal funding has expanded in recent decades.<sup>47</sup> The possible reduction of federal funding to a state or municipality is significant.<sup>48</sup> States and localities will change—and have changed—their policies to maintain federal funding. That police departments can reclaim their status for federal funding does not negate the fact that the law could reduce or withdraw funding from police departments.

Unlike the first or second interpretations, the managerial or oversight interpretation of “defunding” is oriented around the lawfulness or effectiveness of the police. The point of funding reform is not to change society, but to make police better at the existing panoply of tasks society expects them to do. That is, the central purpose of this kind of defunding would be to control individual officers through systemic reforms.<sup>49</sup> If manipulating funding streams reduces the significance of structural marginalization, that is a welcome side-effect of the reform. But it is not the central purpose. Thus, proponents of the managerialist frame are more likely to speak of individual bias and discretion. And they are more likely to consider structural forces that subordinate racial minorities to be beyond the reach of police reforms. So while there is nothing wrong per se with police lawfulness or efficiency or the intersection between the two, this oversight perspective creates a foundation for lawmakers and policymakers to embrace reforms that obscure and entrench structural inequality enforced through criminal law—a foundation that those adhering to the first and second meanings seek to contest.<sup>50</sup>

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47. See, e.g., Harmon, *supra* note 43, at 882-84 (discussing intermittent influxes of federal funds to local law enforcement agencies since the 1960s); BRIAN A. REAVES, U.S. DEP’T OF JUST., NJC 248677, LOCAL POLICE DEPARTMENTS, 2013: PERSONNEL, POLICIES, AND PRACTICES 8 (May 2015), <https://perma.cc/UF75-C3EV> (finding that seven in ten police departments include a community policing component that enables federal funding).

48. See VERA INST. OF JUST., THE IMPACT OF FEDERAL BUDGET CUTS FROM FY10-FY13 ON STATE AND LOCAL PUBLIC SAFETY: RESULTS FROM A SURVEY OF CRIMINAL JUSTICE PRACTITIONERS 2-12 (2013), <https://perma.cc/8MQ8-RFX8> (reporting survey responses of state and local law enforcement agencies expressing serious concern about reductions in federal funding to local law enforcement); NAT’L CONF. STATE LEGISLATURES, NCSL FISCAL BRIEF: STATE BALANCED BUDGET PROVISIONS 2 (Oct. 2010), <https://perma.cc/X64P-4CJV> (“Most states have formal balanced budget requirements with some degree of stringency, and state political cultures reinforce the requirements.”).

49. See, e.g., William J. Stuntz, *The Political Constitution of Criminal Justice*, 119 HARV. L. REV. 780, 844-45 (2006) (suggesting that Congress should spend its energy funding local officials who do most of the work in controlling crime).

50. As a case in point, adherents to the managerialist frame often embrace proactive policing because it is ostensibly efficient—a contested claim—even though it has deleterious effects on society that are disproportionately borne by marginalized

*footnote continued on next page*

#### D. Fiscal Constraints

Finally, defunding the police could relate to the idea that resources are scarce in the public sector, so all government agencies have a responsibility to tighten their belts.<sup>51</sup> The primary aim is reducing costs, not transforming policing institutions, though fiscal-constraint-type reforms tend to have that effect as well. Under this interpretation, defunding the police is just that—an effort to reduce government spending in the area of criminal administration without any commitment to changes in practices and policies.

Some of the recent budget changes to the New York City Police Department (NYPD) illustrate the cost-reductionist interpretation of defunding the police. In the face of severe financial deficits brought on by the COVID-19 pandemic and its effect on the economy, Mayor Bill de Blasio set out to reduce police funding as early as April 2020.<sup>52</sup> And in response to the protests following the death of George Floyd, in May, New York City Council members pledged to cut New York City’s police spending by \$1 billion. As the Council explained, these cuts would “limit the scope of the NYPD” and “show our commitment towards moving away from the failed policing policies of the past.”<sup>53</sup> Despite these rhetorical commitments, the 2021 New York City budget reflected a deeper commitment to reducing city costs than to transforming policing or society.<sup>54</sup>

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communities. Compare CHETTIAR et al., *supra* note 40, at 10 (encouraging expansion of proactive policing), with Meares, *Public Good*, *supra* note 38 (demanding that we “abandon the project of ‘proactive policing’”), and BUTLER, *supra* note 15, at 91-97 (explaining the racialized effects of “stop-and-frisk,” a cornerstone of proactive policing).

51. This framing builds on a long history of police departments facing budgetary constraints as part of a trend toward “budget-cut criminal justice reform.” See generally Mary D. Fan, *Beyond Budget-Cut Criminal Justice: The Future of Penal Law*, 90 N.C. L. REV. 581 (2012). Whether this is a good or bad thing has been debated. For critiques of this trend as contrary to efforts to address mass incarceration, see Jessica M. Eaglin, *Against Neorehabilitation*, 66 SMU L. REV. 189, 194 (2013) (critiquing emergency, cost-conscious sentencing reforms because they fail to “provid[e] a significant change in the problematic policies that led [the United States] to the current crisis”); MARIE GOTTSCHALK, *CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS* 26 (2015) (lamenting that “the Great Recession has spurred excessive hopes that the United States is at the beginning of the end of mass incarceration because the fiscal costs are too high to sustain,” and pointing to broader “political, economic, and institutional forces that . . . sustain the carceral state”).
52. See Jeffery C. Mays, *Virus Forces a “Wartime” Budget on N.Y.C., with \$2 Billion in Cuts*, N.Y. TIMES, <https://perma.cc/VZ36-WVXW> (updated July 1, 2020).
53. Press Release, Joint Statement from Speaker Corey Johnson et al. on Proposed Cuts to the NYPD Budget (June 12, 2020), <https://perma.cc/A67Q-XZC4>.
54. When asked whether these reforms would “defund” the police, Mayor Bill de Blasio explained, “If you are not spending the money on that agency, if money that agency was planning to spend is no longer in their budget, that is savings by any measure.” Dana Rubinstein & Jeffery C. Mays, *Nearly \$1 Billion Is Shifted from Police in Budget That Pleases No One*, N.Y. TIMES, <https://perma.cc/V2BU-246L> (updated Aug. 10, 2020).

The city made plans to cut \$350 million in overtime pay for NYPD officers.<sup>55</sup> It also has delayed the hiring of approximately 1,160 new police officers and intends to reallocate the \$400 million fiscal responsibility for school safety agents from the NYPD to the Department of Education.<sup>56</sup>

This fiscal-constraint interpretation of defunding the police likely conflicts with efforts to address structural marginalization as such reforms tend to entrench the marginalizing structures. For example, the NYPD budget cuts implemented by de Blasio will shift responsibility for the school safety line from the NYPD back to the Department of Education.<sup>57</sup> But the Department of Education was already spending some \$300 million underwriting the program.<sup>58</sup> This reallocation potentially reduces educational resources by \$100 million without significantly reducing police funding or fundamentally altering the idea of safety in schools. Indeed, budget constraints have been the catalyst for numerous reforms that exacerbate structural marginalization. For example, a fiscal-constraints orientation can facilitate the expansion of proprietary, data-driven technology to allow police to continue proactive policing at a lower cost while avoiding critical engagement with whether the practice should continue at all.<sup>59</sup> Perverse incentives can catalyze police departments to close budget gaps in ways that exacerbate structural marginalization—for example, by increasing citations and other forms of regressive levies on the poor,<sup>60</sup> selling arrest records for a profit,<sup>61</sup> providing specialized services to wealthy communities for a fee,<sup>62</sup> and more.

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55. *Id.*

56. *Id.*

57. Note that Mayor de Blasio’s administration characterizes this transition as “a multiyear process,” so school safety officers remain within the NYPD budget for at least part of the 2020–21 fiscal year. Joe Anuta, *School Safety Agents Will Stay Under NYPD This Year, Despite City’s Claims of \$1B Cut*, POLITICO, <https://perma.cc/85FY-737M> (updated July 2, 2020, 10:47 PM EDT). For context on the origins of New York City’s existing school-safety program, see Randal C. Archibold, *New Era as Police Prepare to Run School Security*, N.Y. TIMES (Sept. 16, 1998), <https://perma.cc/GWH2-ECD2>.

58. COMMUNITIES UNITED FOR POLICE REFORM, THE PATH FORWARD: HOW TO DEFUND THE NYPD, INVEST IN COMMUNITIES & MAKE NEW YORK SAFER 13 (June 16, 2020), <https://perma.cc/J4EH-E48A> (calling for the elimination of police in schools to permit the reinvestment of over \$300 million into the Department of Education); Rubinstein & Mays, *supra* note 54 (explaining that the Department of Education pays the NYPD for in-school security services). For an insightful call to critique school policing through a public health lens, see Thalia González, *Race, School Policing, and Public Health*, 73 STAN. L. REV. ONLINE 180 (2021).

59. See ANDREW GUTHRIE FERGUSON, THE RISE OF BIG DATA POLICING: SURVEILLANCE, RACE, AND THE FUTURE OF LAW ENFORCEMENT 20–33 (2017) (noting the expansion of data-driven policing technologies in response to budgetary constraints).

60. See U.S. DEP’T OF JUSTICE, CIV. RTS. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 5–10 (2015) (noting perverse financial incentives that shaped policing in problematic ways).

The third and fourth interpretations are similar in important respects. Like managerialists, cost-reductionists may not consider themselves to be defunding the police. Rather, both envision themselves as embracing principles of good management. Both focus narrowly, emphasizing the allocation of money within police budgets. Both are committed to actively funding police departments rather than intentionally removing funding from their budgets. In this sense, managerialists and cost-reductionists are both a world away from abolitionists and recalibrationists. However, managerialists and cost-reductionists diverge in one very important way. While managerialists are concerned with shaping individual officers’ behavior through systemic reforms, cost-reductionists are preoccupied with savings. Any influence that the cost-cutting measures have on systemic practices, such as increased efficiency in police work or alterations in persistent officer conduct, is a welcome benefit. But it is not the primary aim.

## II. “Defund the Police” as Discourse

To “defund” is a plastic and malleable term in the context of policing. Each of the above reforms could literally defund the police, yet only some of these reforms fit within the frame of grassroots activists’ demand to “defund the police” in this moment. That many would not interpret some of these reforms as defunding the police illuminates the simple point that the meaning of “defund the police” is socially and historically situated. Thus, when considering whether and what kinds of legal reforms can satisfy the demand in this moment, we must begin by understanding both what the demand means in social context, and why the demand is politically and historically significant. As this Part points out, the demand to defund the police emerged as part of a critique of the structural marginalization of race- and class-vulnerable people and its enforcement through criminal law. Because activists use words central to the historical shift in government practices as the means to critique that marginalization, the entire discourse challenges existing worldviews. The intersection of this discursive critique with debates about police reform creates genuine confusion.

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61. See, e.g., JAMES B. JACOBS, *THE ETERNAL CRIMINAL RECORD* 197 (2015). For an insightful explanation of the racially discriminatory implications of the creation and expanding use of criminal records outside the criminal justice system, see Eisha Jain, *The Mark of Policing*, 73 STAN. L. REV. ONLINE 162 (2021).

62. Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 724-27 (2020) (describing the Expanded Neighborhood Policing program in Dallas, Texas).



Americans changed the function of government at the end of the twentieth century. We shifted from a social welfare state to something else,<sup>63</sup> often termed neoliberalism. Though that term can mean many things, it generally expresses a shift toward market logics in government activities, the privatization of public functions, the slashing of the social safety net, and the expansion of the carceral arm of the state.<sup>64</sup> At times, this transformation has been explicitly driven by anti-black racism.<sup>65</sup> But regardless of intent,<sup>66</sup> its effects have most impacted the most marginalized in the United States.<sup>67</sup> Yet neoliberal logics make that marginalization seem natural, when in fact it is very much constructed by shifts in legal policies and transformations in government presence.

Discursively, the social meaning of “defund the police” emerges from “[o]ne of the most contested planks” of the Black Lives Matter movement: the call to “invest/divest.”<sup>68</sup> According to the Movement for Black Lives’ policy platform, this means “investments in Black communities, determined by Black communities, and divestment from exploitative forces including prisons, fossil fuels, police, surveillance and exploitative corporations.”<sup>69</sup> In recent years, the “invest/divest” demand has morphed into the demand to “defund the police.”<sup>70</sup>

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63. See, e.g., ELIZABETH HINTON, FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA 10-11 (2016); KATHERINE BECKETT, MAKING CRIME PAY: LAW AND ORDER IN CONTEMPORARY AMERICAN POLITICS 9-10 (1997).

64. See BERNARD E. HARCOURT, THE ILLUSION OF FREE MARKETS: PUNISHMENT AND THE MYTH OF NATURAL ORDER 42-43 (2011).

65. See MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES 211-21 (2013) (situating the neoliberal political project and racial exclusion as co-constitutive of one another).

66. See generally Naomi Murakawa & Katherine Beckett, *The Penology of Racial Innocence: The Erasure of Racism in the Study and Practice of Punishment*, 44 L. & SOC’Y REV. 695, 696-700 (2010) (critiquing the narrowing of conceptions of racism alongside the expansion of the carceral state).

67. See, e.g., Kaaryn Gustafson, *The Criminalization of Poverty*, 99 J. CRIM. L. & CRIMINOLOGY 643, 715 (2009) (critiquing the criminalization of poverty and suggesting that this trend “highlights economically and legally institutionalized ideologies of neo-liberalism, racism, sexism, and the dehumanization of the poor.”); LOÏC WACQUANT, PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY 16 (2009) (urging study of penal policies as an “essential chapter” in the sociology of the state and social stratification).

68. See Brentin Mock, *The Price of Defunding the Police*, BLOOMBERG: CITYLAB (July 14, 2017, 4:00 AM PDT), <https://perma.cc/P8KG-Z8L2>. For more on the origin of the Black Lives Matter movement, see Jelani Cobb, *The Matter of Black Lives*, NEW YORKER (Mar. 7, 2016), <https://perma.cc/8RJ8-9KL6>.

69. *Invest-Divest*, MOVEMENT FOR BLACK LIVES, <https://perma.cc/H8FG-9L3F> (archived May 6, 2021).

70. See, e.g., Mock, *supra* note 68.

In the wake of George Floyd’s death on May 25, 2020, “defund the police” emerged as a new slogan among protestors of police brutality alongside the slogan “Black Lives Matter.” As activist and law professor Justin Hansford explains, the call to defund the police developed not only as a symbolic call to affirm black lives, but “a substantive slogan that includes the [policy] proposal” for how to do it.<sup>71</sup>

Thus, the social meaning of defunding the police embeds a critique of the historical transformation in government logic. The demand to divest and invest is a demand to address structural marginalization,<sup>72</sup> which in turn illuminates its disproportionate concentration among black people. Treating police violence as a symptom makes the racialized nature of structural marginalization visible.<sup>73</sup> So, to the extent that public discourse orients around what to do about policing, it is too narrow in scope. The place to start is with the structural marginalization of black people that we all have been conditioned not to question. From this perspective, disagreements between abolitionists and recalibrationists, while important as an academic matter, are less significant as a policy matter in this moment. One can support reforms that would directly redress the structural marginalization of black people through criminal law without demanding total police abolition.<sup>74</sup>

But even this insight does not resolve the controversy surrounding the phrase “defund the police,” because the fact that the demand is so controversial requires deeper analysis. That, as a discourse, to defund the police is jarringly confusing illuminates the epistemological implications of neoliberalism. Government did not simply change; we changed it by thinking differently and accepting different concepts as logical and beyond question.<sup>75</sup> Two central concepts that changed are policing and defunding, which operate not only as things or acts, but as sub-worldviews that sustain neoliberalism. As a discourse, the call to “defund the police” destabilizes these concepts. It demands that we engage with worldviews we are all trained not to see, let alone question.

Start with policing. That the demand to defund the police challenges our worldview about policing is quite obvious, but bears explaining. Police offer

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71. Georgetown Law, *supra* note 18, at 48:10-49:03.

72. Akbar, *supra* note 24, at 110-11.

73. See Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 GEO. L.J. 1479, 1482 (2016) (encouraging readers “to view police violence against African-Americans as a structural phenomenon and not simply as a product of rogue police officers who harbor racial animus against black people.”).

74. See Bell, *supra* note 62, at 760-65; Bell, *supra* note 39, at 2147-49.

75. Cf. Lewis R. Gordon, *African-American Philosophy, Race, and the Geography of Reason*, in NOT ONLY THE MASTER’S TOOLS: AFRICAN AMERICAN STUDIES IN THEORY AND PRACTICE 43 (Lewis R. Gordon & Jane Anna Gordon eds., 2006) (emphasizing that shifts occur in social meaning alongside shifts in power).

“an interpretive lens through which people make sense of, and give order to, their world.”<sup>76</sup> This ontological commitment emerges from a way of thinking that suggests the place where government should exist—the thing it is good for—is first and foremost criminal law enforcement.<sup>77</sup> This worldview has influenced politics and social policy in numerous ways, in part by driving politicians and policymakers to frame social issues as crime issues.<sup>78</sup> That is, we came to see the world through policing. It emerged as the last place to critique and the first place to invest local finances.

The term also challenges our assumptions about *defunding* and the government. In the United States, we similarly ascribe an interpretive lens to the demand to defund. The concept has deep roots in efforts to transform the welfare state in the United States since the 1970s.<sup>79</sup> By 1982, the term was commonplace in news and media debates about “liberal causes” ranging from abortions, to education, to unionism, and more.<sup>80</sup> In law-and-policy parlance, then, to defund means to destroy,<sup>81</sup> specifically in the public sector. The

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76. Meares, *Narratives*, *supra* note 38, at 561 (quoting criminologist Ian Loader and sociologist Aogán Mulcahy).

77. *See, e.g.*, HARCOURT, *supra* note 64, at 196-203 (asserting that “carceral developments” in the United States have been “facilitated by—not caused by, but made possible by—the rationality of neoliberal penalty: by, on the one hand, the assumption of government legitimacy and competence in the penal arena and, on the other hand, the presumption that the government should not play a role elsewhere.”).

78. *See, e.g.*, JONATHAN SIMON, GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR 4-5 (2007); AYA GRUBER, THE FEMINIST WAR ON CRIME: THE UNEXPECTED ROLE OF WOMEN’S LIBERATION IN MASS INCARCERATION 70-72 (2020).

79. The term was used on the legislative floor in the late 1970s in relation to affirmative-action legislation that would require most federal grant recipients to obtain 10% of “the articles, materials, and supplies which will be used” in the funded project from “minority business enterprises.” 123 Cong. Rec. S7156 (Mar. 10, 1977) (remarks of Sen. Brooke) (“This section shall not be interpreted to defund projects with less than 10 percent minority participation in areas with minority population of less than 5 percent.”)

80. *See* Richard A. Viguerie, Opinion, *Defund the Left*, N.Y. TIMES (Aug. 11, 1982), <https://perma.cc/FU2G-PZHS> (claiming that “conservatives believe that defunding the left should be a principal priority of the Reagan Administration.”); *see also* NAN ARON, LIBERTY AND JUSTICE FOR ALL: PUBLIC INTEREST LAW IN THE 1980S AND BEYOND 14 (1989) (describing the Reagan Administration’s political philosophy of drastically reducing the domestic role of the federal government as part of a larger effort to “defund[] the left,” including by “cut[ting] off sources of public funding for public interest and legal services organizations”); Jeff Shear, *GOP Catch Phrase for the ‘90s: “Defunding the Left”*, BALTIMORE SUN (Apr. 23, 1995), <https://perma.cc/XP24-KNHR> (chronologically locating efforts to “defund the left” as emerging between 1981 to 1985, when Michael Horowitz was chief counsel at the Office of Management and Budget).

81. *See* Saletan, *supra* note 7 (“*Defund* is generally applied to organizations you want to cripple or eliminate, not reform.”).

connotation is negative and exclusionary. It suggests an absence of government resources and, more precisely, an absence of government all together. That is, to defund has been a political tool to increasingly subject the U.S. population to market forces. It is the embodiment of neoliberalism.

The real controversy around defunding the police, then, arises not just from the demand that we address structural marginalization; it arises also from the demand that we suspend the assumed meaning of both concepts to interrogate policies without a preconceived notion about their meaning. As a discourse, to defund the police creates the space to politically and normatively question the status quo. These words challenge power where force ends—in our minds.<sup>82</sup> Without a doubt, we should expect deep resistance, which the public is demonstrating in droves. For example, mainstream media publishes vehement critiques of the call to “defund the police.”<sup>83</sup> Public polling suggests significant ambivalence toward “defunding the police,” but receptiveness to investing some money in programs other than policing.<sup>84</sup> Policy advocates from across the political spectrum hesitate to embrace the phrase even if they support reforms that may reduce police presence.<sup>85</sup> These facts suggest that the substance of more structural critiques in this moment has gained some public support. But the demand for power over the words that shape dominant worldviews has not.

Some suggest that this reflects the shortcomings of the demand, rather than the shortcomings in dominant worldviews. For example, some argue that protestors should say something different, so that the public may embrace

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82. Cf. Gordon, *supra* note 75, at 41-42.

83. See, e.g., Bass, *supra* note 7; Saletan, *supra* note 7.

84. Giovanni Russonello, Poll Watch, *Have Americans Warmed to Calls to “Defund the Police”?*, N.Y. TIMES, <https://perma.cc/J864-SAN9> (updated Aug. 4, 2020) (finding that “wording matters” in public polling, and noting that 53% of participants in one poll opposed “reducing funding for police departments” while 41% of participants in another poll supported redirecting money from police departments and putting it toward mental health, housing, and other social services”); Saletan, *supra* note 7 (comparing alternative formulations of the call to defund the police within the same polls to illuminate that “the phrase is lethal”).

85. See, e.g., Michael D. Tanner, “Defund the Police” Is a Bad Slogan, but Some Aspects Are Worth Considering, CATO INST. (June 16, 2020), <https://perma.cc/A998-KP48> (“Rather than sending police, it seems social workers or others with appropriate training should respond” to certain tasks like “wellness checks, mental illness, drug overdoses, [and] dealing with the homeless”); Saletan, *supra* note 7 (“Police need to be reformed. . . . And you can make a strong case that if we were to invest wisely in education, employment, mental health, and controlling drug abuse, we wouldn’t have to pay cops to deal with problems that are better managed by social services. But “Defund the police” doesn’t help us make that case. It sets us back [politically].”); see also Lopez, *supra* note 9 (urging parallel tracks between defunding and reforming the police).

their demands.<sup>86</sup> That critique is flawed. It points the finger at activists for not creating a slogan that fits comfortably within existing worldviews.<sup>87</sup> Others say that precision in the substantive ask is the most important component of the demand in this moment.<sup>88</sup> Such a critique demonstrates willingness to consider substantive distinctions between policies, but also resistance to critical reflection on existing worldviews. But these worldviews—our commitments to the present—also demand change. We live in a world where structural factors expose black people to the threat of police violence.<sup>89</sup> Our worldviews—that which makes this reality seem natural—cannot possibly be sound.<sup>90</sup> The demand to defund the police invites critical reflection on two worldviews that sustain the structural scaffold of our present. As a discursive matter, that alone is a worthy endeavor.

Yet this Essay goes further by encouraging the public to embrace the uncomfortable space where we cannot rely on preconceived ideas when interrogating social reforms in this historical moment. By illuminating how diverging interpretations of defunding can lead to different legal reforms, this Essay demonstrates that the very notion of defunding the police is socially and politically constructed—it is a concept that acquires meaning through social and historical interpretation. This insight should remind us that local funding to the police is a distributive project shaped by independently constructed concepts, and that those concepts can obscure normative and political questions about the kind of society in which we want to live. Seeing the

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86. See, e.g., Saletan, *supra* note 7 (emphasizing the “benefits of replacing [the slogan ‘defund the police’] with more thoughtful language”).

87. Indeed, this framing builds from another dominant worldview that positions black people as *the* problem in need of fixing, against which existential phenomenologists have long fought. Gordon, *supra* note 75, at 27 (“Africana existential phenomenology addressed the problematic of problem-people and the demand of a decolonized methodology in several ways,” including a commitment to ontological suspension); see also, e.g., NAOMI MURAKAWA, *THE FIRST CIVIL RIGHT: HOW LIBERALS BUILT THE PRISON STATE* 13–14 (2014) (critiquing both liberal and conservative criminal-justice-reform agendas in the twentieth century as adhering to different, but complementary, framings of black people as problems in need of carceral fixes).

88. Stephen Proctor, *Barack Obama Clarifies His Criticism of “Defund the Police”*: “Not the Point I Was Making”, YAHOO! ENTERTAINMENT (Dec. 16, 2020), <https://perma.cc/SPB9-8UHB> (quoting former President Barack Obama as saying on *The Daily Show with Trevor Noah*, “The issue to me [with defund the police] is not making [people] comfortable, it is, can we be precise with our language enough that people who might be persuaded around that particular issue to make a particular change that gets a particular result that we want, what’s the best way for us to describe that?”).

89. Carbado, *supra* note 73, at 1483–84 (describing six dynamics that lead to police violence against black people: social forces, surveillance, police culture, legal actors and processes, qualified immunity, and government indemnification of police violence).

90. See *id.* at 1480–81 (critiquing the framing of “black on black violence” through the provisional theory of “blue on black violence”).

concepts as constructed rather than naturally occurring creates the space to engage with those deeper questions. It denaturalizes our understanding of this present. As such, embracing the state of confusion the demand produces is an important component in thinking about the transformative project of imagining different, more inclusive futures going forward.<sup>91</sup>

### **Conclusion: Why “Defund the Police”?**

To defund the police can mean many things. As a substantive policy, it provides a path to abolition for some, and a path to police transformation for others. For still others, it provides a pathway to continue transforming governance by making police more effective or, at least, by saving constrained public resources. This Essay illuminates how these substantive meanings of defunding reforms can challenge or entrench structural marginalization. It asks that we remember that the place to start in thinking about reforms in this moment is, quite simply, structural marginalization, not policing or defunding.

Yet, as a matter of discourse, the term “defund the police,” also means something else entirely. This Essay illuminates how and why the demand to defund the police challenges existing worldviews. That public discourse even debates the question, “why ‘defund the police?’” signals the possibilities this challenge presents. To those activists on the ground demanding that the public should critically reflect on the assumptions that shape this present, thank you. To the protestors that took to the streets during the summer of 2020 in the midst of a pandemic to demand that these questions would not be ignored, thank you. This Essay invites us all to see the expansive possibilities that the demand seeks to evoke going forward.

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91. It is distinct from, but complementary to, the growing legal scholarship on democratizing policing and the political economy. See, e.g., Akbar, *supra* note 24, at 115-17; Jocelyn Simonson, *Power over Policing*, BOS. REV. (June 8, 2020), <https://perma.cc/N9D8-68SA>.